

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

No.**77-1115**

In the Matter of the Petition of

ROBERT M. LALLI,

Appellant,

to compel

ROSAMOND LALLI, as Administratrix of the
Estate of MARIO LALLI, Deceased,

Appellee,

to render and settle her account as Administratrix.

LOUIS J. LEFKOWITZ, Attorney General of the State of New
York as Intervenor on behalf of the constitutionality of
EPTL 4-1.2(a),

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

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TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Statute Involved	2
Statement of the Case	2
Argument	4
Conclusion	10

TABLE OF CASES

<i>Labine v. Vincent</i> , 401 U.S. 532 (1971)	5, 10
<i>Trimble v. Gordon</i> , 430 U.S. 762	5, 6, 7, 8, 9

STATUTES

Illinois Probate Act, § 12	5
New York Estates, Powers & Trusts Law	
§ 4-1.2(a)	1, 2, 3, 4
28 U.S.C. § 1257(2)	2

OTHER AUTHORITIES

Bennett Commission on Estates (4th Report, Temporary State Comm. on the Modernization, Rev. and Simplification of Laws on Estates, N.Y. Legis. Doc. 1965, No. 19, pp. 233-271)	9
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The appellee, Attorney General of the State of New York, appearing *pro se* on behalf of the constitutionality of the New York Estates, Powers & Trusts Law, § 4-1.2, subd. (a) paragraph 2, pursuant to Rule 16 of the Rules of this Court, respectfully moves that this appeal be dismissed for want of a substantial federal question or that the judgment below be affirmed.

Opinions Below

The original opinion of the Court of Appeals of the State of New York is published at 38 N.Y. 2d 77 (1975). A subsequent opinion of the Court of Appeals of the State of New York following a remand by this Court is published at 43 N.Y. 2d 65.

The decision of the New York Court of Appeals on remand can be found in Appendix "A" of the Jurisdictional Statement. The opinion of the Surrogate's Court, Westchester County, the court from which this case arose, is not officially reported but can be found in Appendix "B" of the Jurisdictional Statement.

Jurisdiction

Appellant seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(2).

Statute Involved

Estates, Powers & Trusts Law § 4-1.2(a) is reproduced at p. 3, Jurisdictional Statement.

While subdivision (b) is also reproduced at p. 4, Jurisdictional Statement, such subdivision is not now before this Court in that subdivision (b) has nothing to do with the factual situation at bar or the nature of the claim made by the appellant.

Statement of the Case

The appellant seeks to declare unconstitutional a section of the Estates, Powers & Trusts Law of the State of New York, *i.e.*, § 4-1.2(a). An application had been made by the appellant, Robert M. Lalli, in the Surrogate's Court of Westchester County for a compulsory accounting by the

administrator of the estate of Mario Lalli. Robert M. Lalli claimed to be an illegitimate offspring of Mario Lalli and therefore claimed to be a distributee of Mario's estate.

The Surrogate's Court, Westchester County, dismissed the application on the ground that under the Estates, Powers & Trusts Law, § 4-1.2(a), the appellant was not a distributee.

The Court of Appeals of the State of New York on two separate occasions reviewed the constitutionality of the statute at bar and found on each occasion that the statute was constitutional. The second review was following a remand by this Court. While the Attorney General of the State of New York was not a party to the original determination in the Surrogate's Court, Westchester County, or the Court of Appeals of the State of New York when it first heard the case, the Attorney General of the State of New York was permitted to intervene as a party by the New York State Court of Appeals following this Court's remand and the Attorney General participated in the proceedings before the Court of Appeals on the remand.

For the purpose of this appeal there are no factual disputes. The appellant at no time was ever judicially determined to be the son of Mario Lalli. There was no judicial proceeding for such a determination and no order of filiation was ever entered.

In this regard it should be noted that Robert M. Lalli, the appellant, was born on August 24, 1948. The decedent, Mario Lalli, died on January 7, 1974. At no time prior to Mario Lalli's death did Robert M. Lalli attempt to have himself judicially declared to be the son of Mario Lalli.

The Attorney General of the State of New York does not concede that Robert M. Lalli is in fact the son of Mario Lalli, nor does the Attorney General of the State of New

York concede that there was a formal acknowledgement by the decedent for the purposes of establishing kinship and rights of distribution that Robert M. Lalli was his son.

Apparently, Mario Lalli did execute a form during his lifetime giving his permission for Robert M. Lalli to marry at a time when Robert M. Lalli was an infant and his natural mother was already dead and could not execute a consent. What the intentions of Mario Lalli in signing this form were are only speculative. He may have been doing a boy a favor since no one was available and to consider the execution of this form an acknowledgement of paternity is to speculate beyond rational comprehension.

However, the execution of this form giving permission for Robert M. Lalli to marry is neither relevant nor dispositive of the true and simple issue involved in this case.

EPTL § 4-1.2(a) requires an order of filiation be obtained during the lifetime of the putative father. This was not done in the case at bar. The only question now presented to this Court is whether this Court should hold such a rational requirement of the New York State Legislature to be unconstitutional.

It should be noted that the statutory requirement that the order of filiation be obtained within two years from the birth of the child is not under consideration since there was no attempt to obtain an order of filiation during the putative father's lifetime and further because the New York courts have not applied the two-year provision of the statute and have traditionally held that as long as the order of filiation is obtained during the lifetime of the alleged putative father, it is sufficient.

Argument

Appellant has failed to raise any substantial question as to the constitutionality of New York's Estates, Powers & Trusts Law, § 4-1.2 subd.(a) paragraph 2.

A.

The determination of this Court in *Labine v. Vincent*, 401 U.S. 532 (1971) which left to each state the right to impose statutory restrictions with regard to inheritance by illegitimates, is controlling.

The appellant improperly relies on *Trimble v. Gordon*, 430 U.S. 762, as a basis for seeking a reversal of the determination by the New York Court of Appeals, 38 N.Y. 2d 77, 43 N.Y. 2d 65 (*supra*).

It is respectfully submitted that the Illinois statute declared unconstitutional by the Supreme Court of the United States and EPTL § 4-1.2 previously held constitutional by this Court are in no way similar. The Illinois statute, § 12 of the Illinois Probate Act, made no provision whatsoever for an illegitimate to inherit from its natural father except under the very limited circumstances of where the natural parents intermarry and where the natural father then acknowledges his parentage of the child. On the other hand, the statute provided that an illegitimate child could inherit from its natural mother.

This Illinois statute did not concern itself with proof of parentage but rather provided for inheritance only from the mother without considering whether an illegitimate child was in fact a natural child of the father and whether such fact could be established.

EPTL § 4-1.2 on the other hand makes no distinction with regard to the right of inheritance of an illegitimate child from its natural mother or father.

EPTL § 4-1.2 does not limit the right of a child to inherit from its natural father and allows that right to exist side by side with the right to inherit from the natural mother.

The distinction in EPTL § 4-1.2 does not deal with the right to inherit but only with the manner in which the parentage itself is established.

There are obvious physiological differences which create by their very nature certain problems in determining whether any given man is the father of a child as opposed to some other man.

This Court in deciding *Trimble, supra*, recognized this fact and acknowledged that "The more serious problems of proving paternity might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for legitimate children claiming under their mothers' estates or for legitimate children generally." (45 L.W. 4397.) It was this very difficulty which this Court recognized as requiring a more demanding standard for illegitimate children claiming under their fathers' estates which the New York State Legislature in passing EPTL § 4-1.2 considered. The result of the legislators' consideration was the statutory requirement that there be a judicial determination of paternity during the lifetime of the alleged illegitimate's father.

Certainly it is not beyond the scope of legislative province to require a judicial finding of parentage with regard to an alleged putative father during his lifetime so that he might reasonably have an opportunity to contravene the contention of parentage.

This reasonable requirement represents a legitimate legislative purpose to avoid the perpetration of fraud on the People of this state with regard to the disposition of property passing intestate.

The New York Court of Appeals in deciding this case recognized the legitimate purpose of EPTL § 4-1.2 and the fact that this statute did not discriminate or violate the equal protection provisions of either the New York State Constitution or the Constitution of the United States.

It is respectfully submitted that the New York statute in question and the courts of this State have given adequate consideration to the statute's proper objective of

assuring accuracy and efficiency in the disposition of property at death, something which apparently was not done by either the Legislature or courts of the state of Illinois and that the New York statute is, as required by this Court, "carefully tuned to alternative considerations."

In this regard it is important to note that had the appellant in the *Trimble* case, *supra*, been a resident of the State of New York and had she made her claim under the New York statute now before this Court, she could have been successful in establishing her right to inherit. The illegitimate had, in Illinois, obtained an order of the Illinois court during the putative father's lifetime determining paternity and determining which putative father was indeed the father of the illegitimate.

Such an order under EPTL § 4-1.2 would have allowed the illegitimate to inherit from her father since no distinction is made in New York between the right of an illegitimate to inherit from either its mother or father once the paternity of the father is established in a judicial proceeding.

Under the Illinois statute which the Supreme Court of the United States declared unconstitutional, the illegitimate, although judicially determined to be the natural daughter of the putative father, was not entitled to inherit since an illegitimate under Illinois law could only inherit from its natural mother except in one specific case which required two affirmative acts on the natural father's part. The Attorney General is mindful of the fact that in the case at bar the alleged putative father executed a consent for the illegitimate, who was then under age, to marry and that that consent might be construed as an acknowledgment of paternity. The Attorney General is also not unmindful of footnote 14 in the decision of the Supreme Court of the United States in *Trimble v. Gordon, supra*.

However, a careful reading of the entire opinion of this Court in the *Trimble* case, *supra*, does not lead to the con-

clusion that a state in the exercise of its right to control the distribution of property by inheritance cannot require a judicial proceeding as the only basis for establishing paternity of an alleged father provided, of course, that once such putative father is so established there is no discrimination with regard to the right to inherit from either the natural mother or father.

Of course, if a state were to so choose, it could accept a "formal acknowledgement of paternity" as a basis for establishing paternity in the case of an illegitimate. However, it is respectfully submitted that there has not nor can there be any constitutional mandate which would require a state to accept such a formal acknowledgment as a basis for establishing paternity for the purpose of determining a right to inherit. A man may acknowledge paternity for many reasons without regard to any consideration of inheritance rights. In the case at bar, for example, the document giving consent for the alleged illegitimate child to marry may have been executed purely for convenience purposes since the child's natural mother was dead and no one else was available to give the consent necessary.

The Legislature of this State has determined that for inheritance purposes, a judicial proceeding to determine paternity be required and such a determination by the Legislature is reasonable and consistent with their legislative function to protect the interests of the citizens of this State.

So long as the legislative requirement with regard to proof is a reasonable one and so long as once the requirements of proof are made there is no discrimination between inheritance from a natural mother or natural father, the statute which provides for the standard of proof must be deemed constitutional.

The Attorney General respectfully urges that this Court's determination in *Trimble v. Gordon*, *supra*, is

limited on its facts to the peculiar statute in Illinois declared unconstitutional. Since the Illinois statute bears no relationship to the New York statute which clearly provides a constitutional framework with regard to inheritance by illegitimates, the determination by this Court in the *Trimble* case, *supra*, should not affect the holdings of the New York Court of Appeals in the case at bar.

B.

Although the New York Court of Appeals in its two decisions does not refer to the legislative history of EPTL § 4-1.2, that history is indeed specific in its expression of a purpose to mirror by statute the presumed intention of the community with regard to the disposition of property at death. EPTL § 4-1.2 was enacted by the Legislature on the basis of the study and recommendation of the Bennett Commission on Estates (4th Report, Temporary State Comm. on the Modernization, Rev. and Simplification of Laws on Estates, N.Y. Legis. Doc. 1965, No. 19, pp. 233-271).

The State has a responsibility to provide for the orderly devolution of property. There would be insurmountable practical problems involved in meaningful notice to illegitimates in order that procedural due process and finality of decrees and title to property might be achieved.

Within the perimeters of *Trimble v. Gordon*, this Court recognized that:

"The orderly disposition of property at death . . . is a matter particularly within the competence of the individual States . . . and, even when constitutional violations are alleged, those courts [i.e. federal courts] should accord substantial deference to a State's statutory scheme of inheritance."

Neither the overall decision of this Court in *Trimble*, *supra* (whether liberally or narrowly read), nor any other

pronouncement of this Court, furnishes any authority for the proposition that EPTL § 4-1.2 is unconstitutional.

The New York statute does not contain unequal discrimination between any classes of illegitimates nor are there any insurmountable burdens with regard to its compliance. It is a procedural statute whose purpose is to see that the interests of all of the people of the State are protected with regard to the determination of property ownership.

It emanates from a careful analysis of the practical and procedural problems of illegitimate succession and falls clearly within this Court's mandates set forth in *Labine v. Vincent*, 401 U.S. 532 (1971), *supra*.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the appeal should be dismissed or the judgment affirmed.

Dated: New York, New York
February 22, 1978

Respectfully submitted,

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Appellee *Pro Se*
on behalf of the constitutionality
of EPTL 4-1.2

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